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OFFICE OF PETITIONS

In re Application of  
Richard D. McGaughey  
Application No. 10/676,769  
Filed: October 1, 2002  
Attorney Docket No. 13133.20613

ON PETITION

This is a decision on the March 24, 2004 REQUEST FOR A CORRECTED FILING RECEIPT, which is treated under 37 CFR 1.53.

The petition is **DISMISSED**.

On January 12, 2004 and February 26, 2004, petitioner requested a corrected filing receipt on the above-identified patent application based on the fact that the filing receipt received failed to reflect the claim to priority from the provisional application filed October 1, 2002, namely Provisional Application No. 60/415,335. On both January 12, 2004 and February 26, 2004, petitioner included copies of the Provisional Application Cover Sheet used when the provisional application was filed. The requests were dismissed in decisions mailed January 21, 2004 and March 18, 2004, respectively. In both instances it was noted that the filing of the non-provisional application was filed September 30, 2002, which was more than one year from the filing date of the provisional application and thus the provisional application could not be claimed as domestic or foreign priority.

Petitioner was advised that if the filing date of the provisional application was incorrect, a request for a corrected filing receipt could not be issued to correct the priority information in the non-provisional application. A separate petition would need to be filed to correct the filing date in the provisional application if that were the case.

However, a review of the record reveals that the non-provisional application incorrectly claimed priority to 60/415,335. The provisional application that should have been referenced is 60/415,336.

While the error in citing the application number of the Provisional Application may have been inadvertent, a request for a corrected filing receipt cannot be granted. Petitioners will have to file a petition under 37 CFR 1.78 to accept an unintentionally delayed claim for priority citing the correct application number of the provisional application, 60/415,336 filed October 2, 2002.

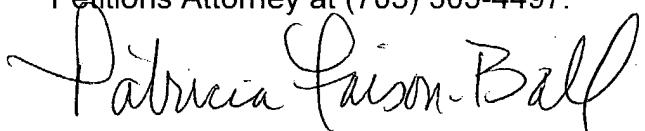
A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application must be accompanied by:

- (i) The reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of 37 CFR 1.78 to the prior-filed provisional application, unless previously submitted;
- (ii) The surcharge set forth in § 1.17(t); and
- (iii) A statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

In view of the above and since the error was not that of the USPTO, no refund is due and none will be issued.

This application is being forwarded to Technology Center 3624 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.



Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions